

UNITED STATES BANKRUPTCY COURT **FILED**
for the
DISTRICT OF NEW HAMPSHIRE

2004 MAY 26 A 10: 56

In re:

Thunderbird Real Estate, LLC

Debtor

CHAPTER 11
Case No. BK-03-12641-MWC
CLERK OF THE COURT
DISTRICT OF NH

**DEBTOR'S MOTION FOR PERMISSION TO SELL TWO LOTS
FREE AND CLEAR OF LIENS AND OTHER INTERESTS WHICH SHALL ATTACH
TO THE PROCEEDS WITH LIMITED COMPETITIVE BIDDING**

The Debtor-in-Possession, Thunderbird Real Estate, LLC, (the "Debtor")
respectfully moves this Court as follows:

Preliminary Statement

1. Pursuant to Section 363 of the Bankruptcy Code of 1978, as amended, 11 U.S.C. §101 et seq. (the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (collectively, the "FRBP"), the Debtor is requesting this Court to issue and enter an order or orders:

A. Authorizing the Debtor to sell its two lots of undeveloped land (the "Property") described in the Sales Agreement and Deposit Receipt attached as *Exhibit A* to FAL Holdings LLC or assigns, Stone Rd., Belmont NH 03320 for the sum of \$132,000 pursuant to such Agreement free and clear of all mortgages, security interests, liens, attachments and other encumbrances of record other than those easements, licenses, profits and other rights which benefit and burden the Property pursuant to the terms set forth in the Sale Contract, as modified by the Order granting this Motion (the "Sale", "Sale Contract", "Contract Price", "Contract Buyer" and "Order")

or the person making the highest and best offer for the Property at the hearing on this Motion (the "Successful Bidder").

B. Waiving competitive bidding as generally required by Bankruptcy Rule 6001, except for requiring the Debtor to serve a copy of this Motion, the Sale Contract and the Bidding Procedures attached hereto as Exhibit B on each person who submitted a written offer for the Property to the Broker and every other person to whom or which the Broker showed the Property ("Offerors" and, collectively, "Potential Bidders").

C. Authorizing the Debtor to pay from the gross proceeds of the sale without further Order (1) the brokerage commission or fee not to exceed the amount of \$7,500.00 due Locke & Seed (the "Broker") and (2) any and all other costs and expenses customarily paid by sellers in New Hampshire residential real estate transactions other than legal and other professional fees which must be approved by this Court ("Customary Closing Costs"), (3) the tax portion of the real estate taxes due the Town of Northfield, New Hampshire (the "Local Government"), plus interest at the rate of 6% from the Petition Date through the date of payment and then (4) pay over the balance to Bank of New Hampshire (the "Bank") for application to the principal portion of its secured claim subject to the disgorgement provisions contained in the Order.

2. Attached to this Motion is a proposed Order on this Motion granting the Debtor the relief requested herein.

CONCURRENCE CERTIFICATE

3. Since the consent Order entered by this Court on April 15, 2004 on

Stipulation for Order on Motion for Relief Pursuant to 11 U.S.C. § 362(d) and Local Bankruptcy Rules 4001 and 7101 (the "Relief Motion Order") requires the sale of the Property that is encumbered by mortgages held by Bank of New Hampshire and the United States Small Business Administration ("SBA") securing debt far in excess of the gross proceeds of the sale, both of which consented to such Order, the Debtor has not sought concurrence.

BASIS FOR REQUESTED RELIEF

4. The Debtor is a limited liability company formed for the purpose of buying, developing, leasing and selling real estate.

5. The Debtor is the owner of the Subject Property subject to the mortgages held by the Bank and SBA and the real estate tax lien held by the Local Government (the "Record Liens" and "Record Lienholders") which shall attach to, and be paid from the proceeds of the sale of the Subject Property.

6. The Debtor has marketed the Subject Property through the Broker since the entry of the Relief Motion Order. The Debtor received offers from Richard Crowley and FAL Holdings LLC (the "Offerors") ranging from \$115,000 to the Contract Price during the marketing period. Neither the Debtor nor its member, Michael Pelletier, have any business or personal relationship with the Contract Buyer outside of the proposed Sale. In the Debtor's and Broker's opinion, the Purchase Price reflects the lowest fair value of the Subject Property under the circumstances and a reasonable price for the Property.

7. The proposed Sale is within the scope of the Debtor's ordinary course of

business.

8. The Subject Property constitutes less than 15% of the value of the Debtor's real estate located in Northfield, New Hampshire according to the appraisal obtained by the Bank. The appraisal valued the Debtor's manufacturing facility and the Property at \$1,650,000.

9. The Debtor and the Debtor's broker believe that:

A. The Sale Price represents the lowest fair value of the Subject Property in the current market; and

B. The remainder of the terms of sale established by the Sale Contract are fair and reasonable and consistent with those generally prevailing in the residential real estate market.

C. Further, the Contract Buyer's willingness to close the transaction no later than the end of the month will prevent the accrual of interest, real estate taxes and other ownership costs and expenses for which the Estate will be responsible.

10. Since this is a simple sale of two (2) unimproved lots at a price commensurate with their fair market value as determined by what has already been a competitive bidding process and the Debtor has served this Motion and the Notice of Intended Sale on each Offeror and every other person to whom the Broker showed the Property, the Debtor believes that this Court can and should approve this transaction without requiring compliance with Bankruptcy Rule 6001 or competitive bidding.

11. Under Section 363(b) and (f), this Court can enter an order authorizing the sale of the Subject Property free and clear of all Liens, except the Permitted

Encumbrances.

12. Sections 363(f) allows the Debtor to sell the Subject Property free and clear of Encumbrances if:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) . . .

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property . . .

13. The Debtor will have filed its disclosure statement and plan of reorganization by the time that this Motion is heard by the Court (the “Disclosure Statement” and “Plan”). The Debtor will pay the tax portions of the real estate tax claims held by the Local Government, plus interest from the Petition Date through the date of payment at the rate of 6% per annum, in accordance with the terms of the Plan. The conveyance of any of the Property will be made, and shall be deemed to have been made pursuant to the Plan, and shall be exempt from the Transfer Tax imposed on transfers of New Hampshire real estate under Section 1146(c) of the Bankruptcy Code. Instead of reserving the money necessary to pay (1) the Transfer Tax should this Court conclude that the Sale is not exempt and (2) interest owed the Local Government should this Court determine that interest should accrue at a rate higher than 6%, the Debtor will pay the money to the Bank subject to the terms of the Sale Order requiring the Bank to disgorge so much of the money as proves to be necessary

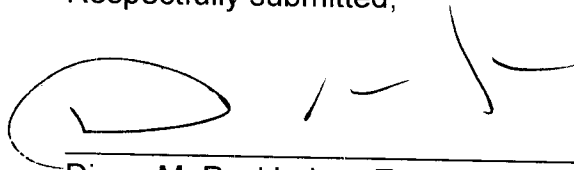
to pay the Transfer Tax and/or more than 6% interest to the Local Government.

CONCLUSION

14. Granting this Motion will result in the sale of the Property pursuant to and in furtherance of the Plan. It will significantly reduce the secured claims held by the Local Government and the Bank and benefit SBA and other creditors. Under the facts and circumstances, the sale of the Property to the Contract Buyer or Successful Bidder, on the terms set forth in the Sale Contract is in the best interests of the Debtor's Estate and should be authorized by this Court in advance of the confirmation of the Plan which contemplates the Sale.

WHEREFORE, the Debtor respectfully requests this Court to issue and enter an order in the form attached hereto, with such amendments or modifications as this Court deems necessary or appropriate

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Diane M. Puckhaber', is written over a horizontal line.

Diane M. Puckhaber, Esq. BNH 01369

DATED: May 24, 2004

Counsel for:

THUNDERBIRD REAL ESTATE, LLC

PERKINS & PUCKHABER, P.A.
PO Box 1138
Concord NH 03302-1138
Ph: 603-224-3322

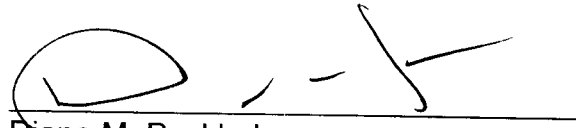
CERTIFICATE OF SERVICE

I hereby certify that on this date I served the within Pleading on each person

named below by causing it to be mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

Each person named on the Service Lists which are attached hereto.

DATED: May 24, 2004



Diane M. Puckhaber

SERVICE LIST

Geraldine B. Karonis - via ecf
Assistant United States Trustee
66 Hanover Street, Suite 302
Manchester NH 03101

Donald Hebert, Esq. - via ecf
Hebert & Uchida, PLLC
244 N. Main Street
Concord NH 03301

Deborah S. Barrett-Smith - via ecf
U.S. Small Business Admin.
143 N Main Street, Suite 202
Concord NH 03301

Richard Crowley
131 New Hampton Road
Franklin NH 03235

FAL Holdings LLC
Stone Road
Belmont NH 03320

STANDARD FORM FOR MEMBERS OF THE NEW HAMPSHIRE ASSOCIATION OF REALTORS®
SALES AGREEMENT and DEPOSIT RECEIPT



THIS AGREEMENT made this 1ST day of MAY, 20 04

Between
The SELLER THUNDERBIRD Real Estate REALTY LLC
of _____ City WILMOT FLATS County of _____ State NH Zip _____
and

The BUYER FAL HOLDINGS LLC OR ASSIGNS
of STONE RD. City BELMONT County of BELKNAP State NH Zip 03320

WITNESSETH: That the SELLER agrees to sell and convey, and the BUYER agrees to buy certain real estate located in
City / Town of NORTHFIELD
TAX MAP R-14 LOT 7-2 CONSISTING OF 5.04 ACRES & MAP R-14 LOT 7-4 CONSISTING OF 2.40 ACRES known as or described as

County MERRIMACK Book _____ Page _____ Date _____

The SELLING PRICE is ONE HUNDRED TEN THOUSAND Dollars \$ 132,000 ^{WKA}

Deposit, receipt of which is hereby acknowledged, in the form of CHECK 110,000--

Is to be held in an escrow account by KENT LOCKE TRUST ACCOUNT in the sum of \$ 5,000.00

Additional deposit will be paid on or before _____ in the sum of \$ 127,000 ^{WKA}

CASH, CERTIFIED CHECK or BANK DRAFT on date of transfer of title _____ in the sum of \$ 105,000.00

DEED: Marketable title shall be conveyed by a WARRANTY deed, and shall be free and clear of all encumbrances except usual public utilities serving the property; any restrictive covenants of record to be acceptable to the buyer.

TRANSFER OF TITLE: On or before MAY 27, 2004 at Attorney's office, Registry of Deeds, Lending Institution, or some other place of mutual consent.

POSSESSION: Free of all tenants, personal property, and encumbrances except as herein stated is to be given on transfer of title or

AGENT: The undersigned SELLERS and BUYERS understand that KENT LOCKE R. E. Agency represents the SELLER, and N/A Agency represents BUYER in this transaction.

INSURANCE: The buildings on said premises shall, until full performance of this agreement, be kept insured against fire, with extended coverage by the SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on delivery of deed, to the BUYER, unless the premises shall previously have been restored to their former condition by the SELLER; or, at the option of the BUYER, this agreement may be rescinded and the deposit refunded if any such loss exceeds \$ N/A.

TITLE: If, upon examination of title, it is found that the title is not marketable, the SELLER shall have a reasonable time, not to exceed 30 days from the date of notification of defect (unless otherwise agreed to in writing), to remedy such defect. Should the SELLER be unable to provide marketable title within said 30 days, the BUYER may rescind this agreement at the BUYER's sole option, with full deposit being refunded to the BUYER and all parties being released from any further obligations hereunder. The SELLER hereby agrees to make a good faith effort to correct the title defect within the 30 day period above prescribed once notification of such defect is received. The cost of examination of the title shall be borne by the BUYER.

TAXES, condo fees, special assessments, rents, water and sewage bills and fuel in storage shall be prorated as of transfer of title or

SELLER (S) INITIALS _____

BUYER (S) INITIALS (WKA)

SALES AGREEMENT and DEPOSIT RECEIPT - Page 2



PROPERTY INCLUDED: All fixtures ***TO INCLUDE ANY AVAILABLE PLANS & DATA***

In Compliance with the requirements of RSA 477:4-a, the following information is provided to the BUYER relative to Radon Gas and Lead Paint:

RADON GAS: Radon gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

LEAD PAINT: Before 1978, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

Disclosure Required ☐ YES ☒ NO

BUYER acknowledges receipt of Seller Property Information Report attached hereto and so signifies by initialing here _____

INSPECTIONS: The BUYER is encouraged to seek information from professionals normally engaged in the business regarding any specific issue of concern. The Agent makes no warranties or representations regarding the condition, permitted use or value of the SELLER's real or personal property. This contract is subject to the following inspections, with results being satisfactory to the BUYER:

TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER	TYPE OF INSPECTION:	YES	NO	RESULTS TO SELLER
a. General Building	___	<input checked="" type="checkbox"/>	within _____ Days	f. Lead Paint	___	<input checked="" type="checkbox"/>	within _____ Days
b. Sewage Disposal	___	<input checked="" type="checkbox"/>	within _____ Days	g. Pests	___	<input checked="" type="checkbox"/>	within _____ Days
c. Water Quality	___	<input checked="" type="checkbox"/>	within _____ Days	h. Hazardous Waste	<input checked="" type="checkbox"/>	___	within 10 Days
d. Radon Air Quality	___	<input checked="" type="checkbox"/>	within _____ Days	i. _____	___	___	within _____ Days
e. Radon Water Quality	___	<input checked="" type="checkbox"/>	within _____ Days	j. _____	___	___	within _____ Days

The use of days is intended to mean calendar days from the effective date of the contract. All inspections will be done by professionals normally engaged in the business, to be chosen and paid for by the BUYER. If the results of any inspection or other condition specified herein reveal significant defects which were not disclosed or previously known to the BUYER, the SELLER shall have the option of repairing the unsatisfactory conditions(s) prior to transfer of title if the BUYER and SELLER both agree, failing which the BUYER may terminate the contract and all deposits shall be returned to the BUYER. Notification in writing of intent to so repair should be delivered to the BUYER or BUYER's Agent within five (5) days of receipt by the SELLER of notification of unsatisfactory conditions(s). Should the SELLER elect not to repair such unsatisfactory conditions, the BUYER may declare the contract null and void by notifying the SELLER in writing within five (5) days of receipt of SELLER's election not to repair, and any earnest money shall be returned to the BUYER. If the BUYER does not notify the SELLER that an inspection is unsatisfactory within the time period set forth above, this contingency is waived by the BUYER. In the absence of inspection mentioned above, the BUYER is relying completely upon the BUYER's own opinion as to the condition of the property.

BUYER HEREBY ELECTS TO ***WAIVE THE RIGHT*** TO ALL INSPECTIONS AND SIGNIFIES BY INITIALING HERE _____

LIQUIDATED DAMAGES: If the BUYER shall default in the performance of their obligation under this agreement, the amount of the deposit may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages. In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said deposit monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof at the address recited herein, and thereupon the Escrow Agent shall be discharged from its obligations as recited therein, and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may deduct the cost of bringing such Interpleader action from the deposit monies held in escrow prior to the forwarding of same to the Clerk of such court.

SELLER (S) INITIALS _____ / _____

BUYER (S) INITIALS WR



PRIOR STATEMENTS: Any verbal representation, statements and agreements are not valid unless contained herein. This agreement completely expresses the obligations of the parties.

FINANCING: This agreement (___ is) (X is not) contingent upon the BUYER obtaining financing under the following terms:

AMOUNT N/A TERM/YEARS N/A RATE N/A
TYPE OF MORTGAGE N/A

The BUYER agrees to act diligently and in good faith in obtaining such financing and shall, within N/A calendar days, after the SELLER's written acceptance, submit a complete and accurate application for mortgage financing to at least one financial institution currently providing such loans, requesting financing in the amount and on the terms provided in this agreement. If the BUYER does not make application within the specified number of days, or if the BUYER fails to provide written financing commitment or written evidence of inability to obtain financing acceptable to SELLER by N/A, TIME BEING OF THE ESSENCE, the financing contingency shall lapse, and SELLER shall have the option of declaring the BUYER in default. In the event written evidence of inability to obtain financing is provided by the above date, this agreement shall become null and void, and SELLER hereby authorizes escrow agent to return BUYER's deposit in full. The responsibility to provide SELLER with written evidence, as above, shall be solely the BUYER's.

EFFECTIVE DATE: This is a binding contract and the effective date is when signed and dated, whether by electronic transfer or original, and all changes initialed and dated, by the SELLER and the BUYER.

ADDITIONAL PROVISIONS:

THIS CONTRACT IS CONTINGENT UPON:

~~1. BUYER HAS THE RIGHT TO PERFORM TEST PITS ON SUBJECT PROPERTY, AT BUYERS EXPENSE, ON OR BEFORE MAY 7, 2004. RESULTS TO BE TO BUYERS SATISFACTION OR THIS AGREEMENT SHALL BE NULL & VOID & ALL MONIES RETURNED TO BUYER.~~ *WKN*

2. SELLER TO LOCATE AND/OR RE-ESTABLISH SURVEY MARKERS.

3. SELLER TO CONVEY A RIGHT OF WAY OVER EXISTING DRIVEWAY ACCESS TO SERVE SUBJECT LOTS.

4. BUYER TO VERIFY N.H.D.O.T. DRIVEWAY PERMIT IS AVAILABLE.

A copy of this contract is to be received by all parties and, by signature, receipt of a copy is hereby acknowledged. This agreement shall be binding upon the heirs, executors, administrators and assigns of both parties.

IF NOT FULLY UNDERSTOOD, PARTIES ARE ADVISED TO CONTACT AN ATTORNEY.

William K. Poth, Trustee
BUYER

5/1/04
DATE

003-42-4350
SOCIAL SECURITY #

BUYER

DATE

SOCIAL SECURITY #

The SELLER accepts the offer and agrees to deliver the above-described property at the price and upon the terms and conditions set forth.

SELLER

DATE

SOCIAL SECURITY #

SELLER

DATE

SOCIAL SECURITY #

WILLIAM K. NUTTER 2/01
 48 LINDA LANE
 GILFORD, NH 03249


54-183/117
 01092170

375

DATE 5/1/04

PAY TO THE ORDER OF Kent Locke Trust Account \$ 5000.00

Five Thousand 00/100 DOLLARS


Village Bank & Trust
 GILFORD, NEW HAMPSHIRE 03249

MEMO William K. Nutter

⑆011701835⑆ ⑈0109 2170⑈ 0375

The security features listed below, as well as those not listed, exceed industry guidelines.
 Security Features: Results of document alteration:
 Microprint: Small type in significant areas appears as dotted line when photocopied.
 Chemically Sensitive Paper: Stains or spots may appear with chemical alteration.
 Secure Protection: White mark appears when erased.
 Security Screen: Absence of "Original Document" watermark on back of check.
 Federal Reserve Board of Governors Reg. CC

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

ENDORSE HERE
 pay to the order
 of William S. Nutter
 P.L.C.

EXHIBIT B

SALE MOTION BIDDING PROCEDURES

1. **Capitalized Words, Terms and Phrases.** Except as otherwise defined herein, all capitalized words, terms and phrases defined or used in the Debtor's Motion for Permission to Sell Two Lots Free and Clear of Liens and Other Interests Which Shall Attach to the Proceeds with Limited Competitive Bidding shall have and be given the same meaning when used herein (the "Sale Motion").

2. **Sale to Contract Buyer Absent Objection or Overbid.** Absent a sustained Objection to the proposed Sale or an Overbid by a Qualified Bidder which precipitates a judicial auction of the Property, as such term is defined or used in the Motion, the Debtor and the Contract Buyer will close the Sale in accordance with the terms of the Sale Contract.

3. **Counteroffers; Overbids.** If any person wishes to submit an Overbid for the Property (a "Bidder"), such Bidder must comply with the following requirements on or before the 3rd business day preceding the date scheduled for the hearing on the Sale Motion (the "Overbid Qualification Date") in order to become a Qualified Bidder:

A. An Overbid must be submitted in writing to the Debtor's counsel using the following addresses: Diane M. Puckhaber, Esq., c/o Kelly Smith, PO Box 1138, Concord NH 03302-1138.

B. An Overbid must be for all of the Property.

C. No deposit will be required until the beginning of the hearing on the Sale Motion, but a Bidder must deposit \$3,500 in cash or by bank draft, certified check or in such other manner as may be acceptable to the Debtor at that time.

D. Whether or not any Overbid recites that it is being made on the terms set forth in the Sale Contract, except price, it shall be deemed to incorporate and subject the Bidder to them.

4. Judicial Auction Conditioned on Qualified Bidder or Bidders. If the Court grants the Sale Motion, it will thereafter conduct a judicial auction of the Property at the conclusion of which the Debtor shall sell the Property to the Contract Buyer or the Qualified Bidder making the highest and best offer, whether the Proponent or a Qualified Bidder (the "Auction" and the "Buyer"). Any Auction will be held in accordance with the Bankruptcy Court's customary and usual practices, modified as the Court deems appropriate at the hearing. If the Successful Bidder does not close, the Debtor may sell the Property to the next highest Bid submitted by a Qualified Buyer or the Contract Buyer in the absence of a higher Bid from a Qualified Bidder.

5. Agreement to Request Good Faith Buyer Protection. At the conclusion of the Sale or Auction, the Debtor will sell the Property to the Buyer approved by the Court and ask the Court to enter an order granting such Buyer the the protection afforded a good faith purchaser for value under Section 363 (m) of the Code absent actual knowledge that such protection should not be granted to the Buyer.

**UNANIMOUS CONSENT OF MEMBER
IN LIEU OF SPECIAL MEETING
of
THUNDERBIRD REAL ESTATE, LLC**

IN LIEU OF A SPECIAL MEETING OF THE MEMBER of Thunderbird Real Estate, LLC, a New Hampshire limited liability company (the "Company"), the Undersigned, being the sole Member of the Company (the "Board"), does hereby waive notice and all other formalities required by the laws of the State of New Hampshire and consents to, approves and adopts the following Resolutions by unanimous consent which shall become effective on, and at the Effective Date and Time.

RESOLVED:

The Company, acting by and through its sole and managing Member, Michael P. Pelletier, be, and hereby is authorized, directed and empowered to enter into agreements with FAL Holdings, LLC regarding the allocation of the real property to be sold to FAL Holdings, LLC pursuant to the Sales Agreement and Deposit Receipt entered into by and between FAL Holdings, LLC and Thunderbird Real Estate LLC dated May 1, 2004 (the "Sales Agreement").

RESOLVED:

The Company, acting by and through its sole Member, Michael P. Pelletier, be and hereby is authorized, directed and empowered to close and consummate the transactions contemplated by the Sales Agreement and, in connection therewith, shall do or cause to be done such acts and execute or cause to be executed such documents as may be necessary or reasonably incidental thereto (the "Closing Documents"), each of which shall contain such terms and conditions as the sole Member determines to be in the best interests of the Company, such determination to be conclusively evidenced by his execution and/or delivery of any such Closing

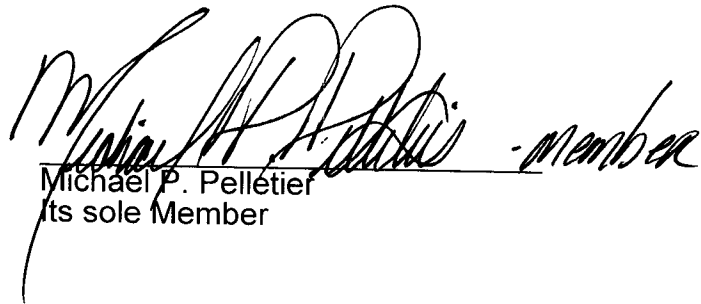
Document.

RESOLVED:

The sole Member of the Company be, and hereby is authorized, empowered and directed to file this Unanimous Consent pursuant to the foregoing Resolution in the Minute Book of this Company after it has been executed by each Member of this Company.

DATED AND EXECUTED as of May 20, 2004 at 10:00 a.m. (the "Effective Date and Time").

Member:

 - member

Michael P. Pelletier
Its sole Member